



**Department of Defense
National Security Personnel System – Proposed Regulations**

February 10, 2005

Fact Sheet

The Department of Defense (DoD) and the Office of Personnel Management (OPM) are issuing proposed regulations to establish the National Security Personnel System (NSPS), a new human resources management system for civilian employees in DoD. The proposal offers new rules and processes for pay and classification, performance management, hiring, reduction in force, disciplinary matters and appeal procedures, and labor-management relations. Upon publication in the Federal Register, the regulations will be available for public review and comment. For more information, visit <http://www.cpms.osd.mil/nsps>.

Background

In November 2003, Congress granted the Department of Defense authority to establish, in partnership with OPM, a new civilian human resources management system to better support its critical national security mission.

DoD and OPM have spent the past year engaged in a design process with input and participation from key stakeholders, including employees, supervisors, managers, union representatives, senior leaders, and public interest groups. These proposed regulations are the result of a rigorous and broad-based effort to modernize the personnel system for the Department, while preserving the core, enduring values of the civil service.

Why NSPS?

Our current HR system is inadequate to manage the diverse DoD civilian workforce in today's dynamic national security environment, which requires a flexible and agile total force to meet the threats of the twenty-first century. Under the current system (which was created over 50 years ago):

- Hiring is too slow, and cumbersome processes adversely affect our ability to attract and retain high quality talent.
- Outdated pay and performance management systems that result in outstanding performers being paid the same as poor performers.
- Rigid, inflexible rules hinder DoD's ability to act expeditiously to meet mission needs and manage from a "total force" perspective.
- Confusing and inefficient disciplinary and appeals procedures fail to allow workplace issues to be resolved in a timely manner.

DoD has over twenty years of successful experience with testing personnel flexibilities, namely in our personnel demonstration projects, such as China Lake and the

Acquisition Demonstration Project – it is now time to expand those flexibilities to the rest of the Department.

NSPS will modernize a 50 year old, outdated civil service system, and allow us to attract, recruit, retain, compensate, reward, and manage our employees, with a focus on performance, flexibility, and accountability.

Highlights

- Simplified pay banding structure, allowing flexibility in assigning work
- Pay increases based on performance, rather than longevity
- A performance management system that requires supervisors to set clear expectations (linked to DoD's goals and objectives) and employees to be accountable
- Streamlined and more responsive hiring processes
- More efficient, faster procedures for addressing disciplinary and performance problems, while protecting employee due process rights
- A labor relations system that recognizes our national security mission and the need to act swiftly to execute that mission, while preserving collective bargaining rights of employees

What Does NOT Change

- Merit System Principles
- Whistle-blower protections
- Rules against prohibited personnel practices
- Veterans Preference Principles
- Anti-discrimination laws
- Benefits (retirement, health and life insurance, etc.)
- Allowances and travel/subsistence expenses
- Training
- Leave and work schedules

Key Elements of NSPS Proposal

CLASSIFICATION

- Simplified structure replaces General Schedule system
- Positions grouped in broad career groups and pay schedules based on nature of work, mission, career patterns, and competencies
- Pay bands replace GS grades with broad salary ranges, based on level of work (e.g., entry level, full performance level, supervisor)
- More flexibility to assign employees new or different work
- Lengthy, detailed job descriptions no longer needed
- Movement through pay band based primarily on performance, contribution

PAY/COMPENSATION

- New framework to enable to move towards market sensitive pay, with consideration of local market conditions to set pay rates, including a local market supplement
- Performance pay increases based on performance/contribution, rather than longevity; larger increases go to outstanding performers; increases not given to unacceptable performers
- Greater flexibility in setting employee pay upon promotion, reassignment, etc.

PERFORMANCE MANAGEMENT

- Cornerstone of a successful performance-based pay system
- Supervisors work with employees to establish performance goals and expectations, aligned with mission-related goals
- Recognition of conduct (behavior, professional demeanor) as an element of performance
- Ongoing feedback and communication between supervisor and employees
- Intense training for supervisors & managers planned
- Ratings reflect meaningful distinctions in employee performance (no forced distribution or quotas)
- Formal process to be established for reconsideration of performance ratings

HIRING/STAFFING

- DoD, with OPM, may establish new hiring authorities, tailored to DoD's needs
- No change in veterans' preference principles
- Government-wide hiring authorities and tools retained
- Direct-hire authority for severe shortage or critical needs vested in Secretary
- Opportunity to improve, streamline examining procedures to speed up the hiring process

REDUCTION IN FORCE

- Simplified RIF process provides for greater precision in defining competitive areas and retention lists (based on organization, location, line of business, or other business related factors)
- Preserves veterans' preference principles
- Flexibility to minimize disruption associated with RIF
- Greater emphasis on performance (over seniority) in retention

ADVERSE ACTIONS

- Single process for taking adverse actions based on performance and/or conduct
- Streamlined 15-day notice/10-day reply period
- Ensures due process
- Allows Secretary to designate Mandatory Removal Offenses (MROs); development and publication of MROs would include input from employee representatives

APPEALS

- Expedited appeals process, using MSPB administrative judges (AJ), with improved procedures
 - Filing deadline for appeals reduced to 20 days
 - Summary judgment allowed when facts not in dispute
 - Initial decision must be rendered within 90 days
- DoD may review initial decisions within thirty days (or it becomes final); may remand, modify, affirm, or reverse initial decision, based on stringent criteria
- Final DoD decisions (including AJ decisions that become final) may be appealed to full MSPB, which retains limited review authority
- Single burden of proof standard: preponderance
- Mitigation by MSPB permitted only when penalty is wholly without justification
- Judicial review provided

LABOR RELATIONS

- Expands non-negotiable management rights (to include determining numbers, types and grades of employees, methods, technology and means of performing work)
- Prohibits bargaining over procedures in exercising core management rights, but management will consult with unions
- DoD and Component-wide issuances (e.g., directives, policies, manuals) non-negotiable
- Limited bargaining over certain management actions; may do so prospectively (post-implementation), with expedited collective bargaining process with impasse resolution
- Nothing delays management's ability to act
- National Level Bargaining, at the discretion of the Secretary (unions may request such bargaining)
- Establishment of a National Security Labor Relations Board to resolve DoD labor disputes
- Negotiated grievance procedures with arbitration retained; but certain matters excluded

OTHER PROVISIONS

- Proposed regulations provide for DoD coordination with OPM prior to promulgating certain issuances, where such actions could have impact on other Federal agencies or the civil service as a whole (e.g., establishing career groups and pay bands; establishing new qualifications standards; setting maximum pay rates; setting pay ranges and local market supplements)
- Continuing Collaboration process to include unions in further development of NSPS, e.g., development of implementing issuances; provides opportunity for unions to review and comment on draft proposals; and discuss their views with DoD officials prior to issuance
- Continuing Program Evaluation to assess and evaluate NSPS implementation; provides opportunity for unions to participate in process

Employees Covered by NSPS

Most DoD civilian employees are eligible to be covered by NSPS. Certain categories of employees are excluded, including Intelligence personnel and employees in the ten DoD laboratory organizations specified in the NSPS law (for certain provisions). DoD is planning on the following implementation approach for deploying NSPS:

- NSPS Labor Relations provisions will be implemented across the entire Department once final regulations are issued and effective, and will cover all DoD employees currently covered by the labor relations provisions of title 5, Chapter 71.
- NSPS pay, performance, staffing, RIF, adverse actions, and appeals provisions will be phased in using a “spiral” implementation approach. The first group, known as “Spiral One,” will include up to 300,000 General Schedule (or equivalent) employees in selected DoD organizations, and will be phased in over approximately eighteen months (once final regulations are issued). Employees in non-GS pay systems, including wage grade employees, will be phased in later (not sooner than 18 months).

Important Facts about NSPS

- Employees will not lose pay upon conversion to the NSPS pay system.
- All employees, supervisors, managers (including military supervisors), and HR practitioners will be trained extensively prior to being affected by NSPS. Supervisory training will include how to set and communicate clear performance expectations and provide effective, ongoing feedback to employees on performance.
- Employees will have an avenue to challenge performance ratings under the NSPS performance management system.
- Employee representatives will have the opportunity to provide input on the development of the detailed policies and procedures for NSPS that will be issued within DoD, through a formal “continuing collaboration” process provided for in the proposed regulations.

Design Process Facts

- Six design Working Groups included over 100 participants from DoD and OPM, including human resources experts, military members, line managers, and functional area experts (EEO, labor relations, legal, comptroller)
- Conducted over 100 Focus Groups and 50 Town Hall meetings worldwide to gather input from employees, supervisors, union officials, and HR practitioners
- Reviewed and considered data and reports from existing alternative personnel systems, including DoD personnel demonstration projects and other Federal agencies
- Held several meetings with DoD employee unions (over 40 labor organizations) to share interests and concerns, discuss potential design options, and gather input for system design

Review and Comment

Upon publication in the Federal Register, interested individuals will be able to review the proposed NSPS regulations and formally submit comments, views, and recommendations on the content of the proposal. Comments must be submitted within 30 days of publication. The proposed regulations also serve as the “written description of the system” that we are required to provide our employee unions. They, too, will have 30 days from the publication date to submit comments and recommendations. All comments received will be given full and fair consideration.

After the comment period, we will initiate the statutory “meet and confer” process with employee unions for 30 days to discuss their views and concerns, and, with the help of the Federal Mediation and Conciliation Service (FMCS), try to find common ground. We’ll report the results and outcomes of the meet and confer period to Congress before finalizing the regulations.

To view and comment on the proposed regulations, as well as to review background material on NSPS, visit <http://www.cpms.osd.mil/nsps>. For individuals who prefer to submit written comments in paper form, they can mail them to:

Program Executive Office, NSPS
Attn: Brad Bunn
1400 Key Boulevard, Suite B-200
Arlington, Virginia 22209-5144

Questions and Answers Publication of Proposed NSPS Regulations

Are you still planning on implementing the system in July 2005?

Yes, that's our plan. But as we've said before, this is an event-driven program, and the publication of these regulations is a major event and a key milestone. As it currently stands, we are in a position to meet our July 2005 implementation target, but we'll take the time needed to do it right.

Will all employees be affected by NSPS initially?

Once DoD and OPM complete the formal collaboration process with the unions, formally notifies Congress, and we finalize the regulations, the labor relations provisions will be implemented across the Department (to those employees currently covered by title 5 labor relations). The other portion of the system (pay banding, performance-based pay, staffing, etc.) will be phased in, starting with our General Schedule workforce. For example, our wage grade population won't initially be affected by the new pay provisions, but will be subject to the new labor relations rules.

How similar are the proposed NSPS regulations to the recently published DHS regulations?

Our design process was informed by the DHS experience, and where it made sense, we adopted their approach in certain areas. For example, in the arena of labor relations and employee appeals, it made sense to have similar procedures, so you will see a lot of similarity in those areas. We are different in some areas because our two organizations have differences in scope, mission, operational requirements, and statutory authorities. For example, the NSPS statute allows DoD to change the rules in the areas of hiring and reduction in force – those are flexibilities that DHS does not have.

Will NSPS eliminate within-grade step increases and the annual General Schedule pay increase?

Under NSPS, pay increases will be based primarily on performance and/or contribution, and unacceptable performers will not be eligible for pay increases. In a pay banding system, there are no "steps" similar to the GS system. Pay increases and/or performance bonuses are based on the employee's performance rating. The proposed NSPS rules include a rigorous "pay pool" process to distribute performance-based pay increases throughout organizations; the pay pool process will be a credible process with appropriate safeguards that ensures that outstanding performers are rewarded accordingly.

The proposed pay rules also provide for periodic “rate range” adjustments, to adjust the minimum and/or maximum rate of a pay band. When a minimum rate of a pay band is adjusted upward, employees will receive an equivalent increase. However, unacceptable performers will not be eligible for such increases.

Will there still be locality pay under the NSPS pay system?

The proposed NSPS pay system includes a locality-based component of pay called a “local market supplement” in addition to an employee’s basic pay. The local market supplement will be based on market conditions related to geographical and occupational factors, and may differ from one occupation to another in a given locality area. Upward adjustments to local market supplements will not be given to unacceptable performers.

How will supervisors be accountable for exercising their responsibilities under NSPS?

The flexibilities proposed in the NSPS regulations bring with them an increased need for accountability. This includes employee accountability for performance, as well as supervisory and managerial accountability for the proper exercise of the authorities in NSPS. Extensive training will be given to supervisors and managers, with a focus on improving skills needed for effective performance management, such as setting clear expectations, communicating with employees, and linking individual expectations to the goals and objectives of the organization. Supervisors and managers will be held accountable for how effectively they use the tools provided by NSPS. They will also be subject to the pay and performance provisions of the system, and their pay will be affected by how well they perform their duties as supervisors and managers.

Will NSPS do away with bargaining units and employee unions?

No. The proposed NSPS regulations do not affect the right of employees to participate in labor organizations and bargain collectively. The implementation of the NSPS labor relations system will not eliminate unions or bargaining units. The proposed rules enable the Department to act expeditiously in carrying out its mission by limiting the situations that are subject to bargaining, and speeding up the bargaining process. However, the NSPS labor relations system recognizes the important role that unions play in the workplace, and preserves that role under NSPS.